



**City of Huntington Beach**

# **Policy Discussion concerning Cannabis-related Taxation & Regulation**

**City Council Study Session**

February 15, 2022



# Background

- The City prohibits medical and recreational cannabis activities in the City.
  - Exception: allowing/regulating non-medical marijuana cultivation per a private residence up to six plants
- Two private parties have filed separate cannabis petitions requesting that the City prepare documents allowing their proposed regulations to be placed before the voters of Huntington Beach for consideration.
  - November 3 – *Huntington Beach Cannabis Taxation and Regulation Act*
  - December 2 – *Huntington Beach Cannabis Regulation & Land Use Measure*



# Background - Continued

- On December 21, 2021 Study Session, the City Council formed an ad-hoc subcommittee to further assess, research and present a balanced cannabis regulation framework for the Council's consideration.
- An Ad-hoc subcommittee of 3 City Council members consisting of City Council members Bolton, Kalmick, and Peterson, was formed.
  - The Committee met twice to deliberate several key policy issues related to cannabis.
  - Staff conducted research on best practices / model regulatory ordinances for the Committee's consideration as a starting point.
- Staff also engaged cannabis industry representatives to learn about their perspectives on an alternative balanced ballot measure.



# Commercial Cannabis - Pros & Cons\*

Pros	Cons
✓ Economic development opportunities	✓ Public safety issues
✓ Generate local jobs	✓ Staffing and enforcement costs
✓ De-incentivize illegal market	✓ Potential safety hazards for cannabis manufacturing and processing
✓ Revenue generation	✓ Substance abuse, particularly by youth
✓ A tool to boost tourism efforts	✓ Odor and nuisance
✓ Meet the evolving needs of the public, whose perception of cannabis is trending more positively	✓ Increased exposure to litigation regarding the city's process and implementation of cannabis programs
✓ Opportunity for social equity initiative	✓ Utility strain (water/electricity/hazardous waste)

\*Reference: Local Impacts of Commercial Cannabis Report published by ICMA (Sept, 2018)

# FURTHER CONSIDERATIONS

## Some considerations when establishing commercial cannabis regulations:

- ✓ Public safety and administration cost
- ✓ Utilize best practices and approaches for permitting and implementing cannabis regulations while tailoring them to the unique environment of Huntington Beach
- ✓ Maintain a cautious approach, as things are rapidly changing and long-term community impacts are still unknown.
- ✓ Take into consideration potential community impacts.



# Policy Decision 1-5 By the City Council

Five Key Policy Areas include:

- 1 Types of Cannabis Industry**
- 2 # of licenses and selection process**
- 3 Zoning & Buffer requirements**
- 4 Revenue options (taxes, fees, or others)**
- 5 Inspection and enforcement protocols**

# Policy Decision: WHAT TYPES OF CANNABIS INDUSTRY?

1

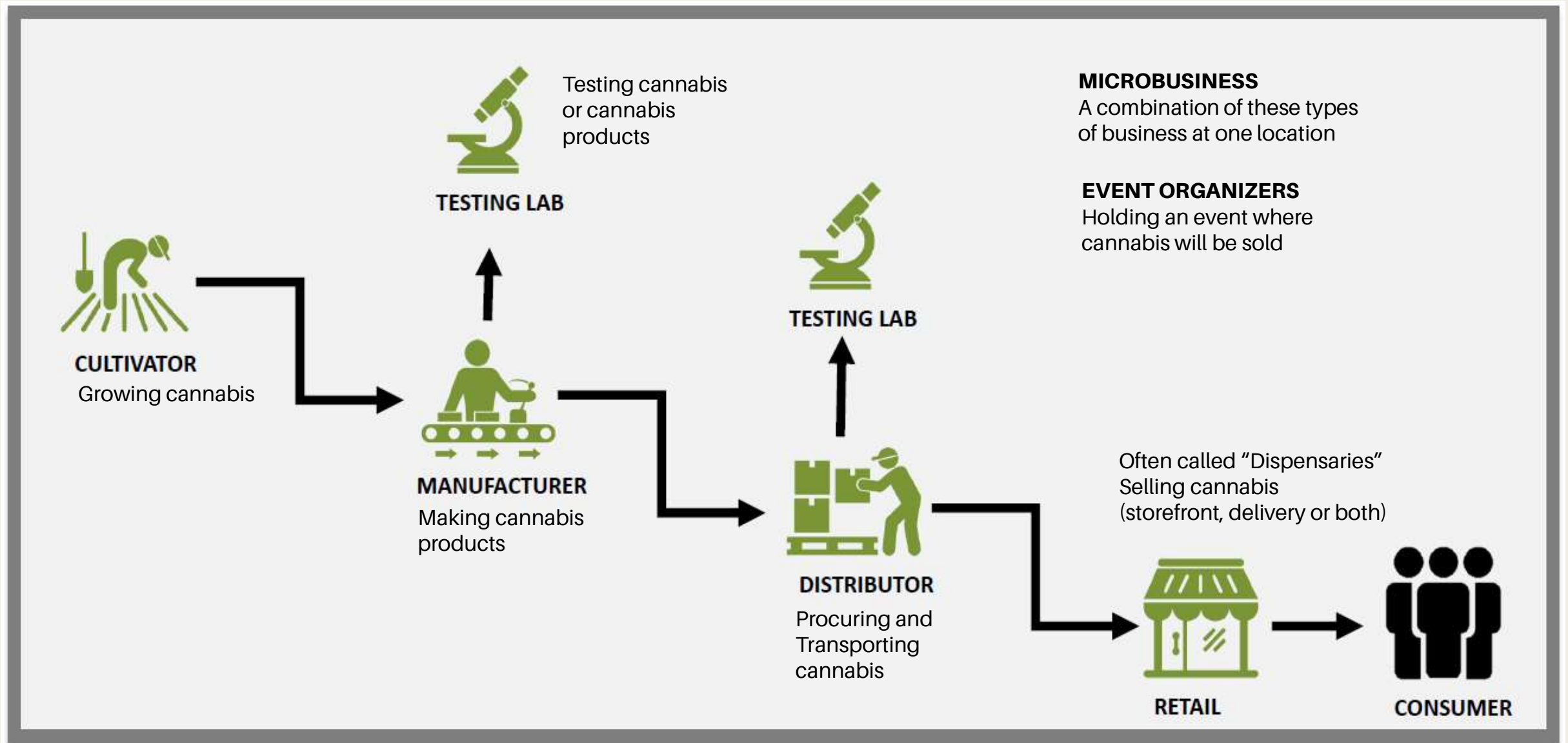
Types of Cannabis Industries include:

Retail	Non-Retail
<ul style="list-style-type: none"><li>• Storefront Retail (dispensary)</li><li>• Non-Storefront Retail (i.e. delivery-only)</li><li>• Both Storefront and delivery services</li></ul>	<ul style="list-style-type: none"><li>• Cultivation</li><li>• Manufacturing</li><li>• Testing Laboratories</li><li>• Distribution</li><li>• Microbusiness</li></ul>

Each offer different challenges and opportunities for the City.



# Commercial Cannabis - Categories







# Cannabis Industry Types: Retail or Non-Retail?

## Comparison w/other cities

	Orange County			Outside OC		Huntington Beach
	Santa Ana	Costa Mesa	Irvine	Long Beach	Pasadena	Petition 1, 2
Retail	YES	YES	NO	YES	YES	YES
Non-Retail	YES	YES	YES	YES	YES	YES
Types of Non-Retail	<ul style="list-style-type: none"><li>• Cultivation</li><li>• Manufacturing</li><li>• Testing lab</li><li>• Distribution</li></ul>	<ul style="list-style-type: none"><li>• Manufacturing</li><li>• Testing lab</li><li>• Distribution</li></ul>	<ul style="list-style-type: none"><li>• Testing lab</li></ul>	<ul style="list-style-type: none"><li>• Cultivation</li><li>• Manufacturing</li><li>• Testing lab</li><li>• Distribution</li></ul>	<ul style="list-style-type: none"><li>• Cultivation</li><li>• Testing lab</li></ul>	<ul style="list-style-type: none"><li>• Cultivation</li><li>• Manufacturing</li><li>• Testing lab</li><li>• Distribution</li></ul>



## **Policy Decision: What types of businesses should the City allow?**

### **The Subcommittee's Recommendation**

- ✓ Both retail and non-retail, except outdoor cultivation
  - ☐ Retail (Storefront, delivery, or both)
  - ☐ Non-Retail
    - Indoor cultivation
    - Manufacturing
    - Testing Labs
    - Distribution

2

# Policy Decision: How many licenses should be allowed and how?

CAP	NO CAP
<ul style="list-style-type: none"> <li>Limit number of businesses through licensing process</li> <li>Most appropriate for retail license types (e.g. storefront retail)</li> <li>Requires competitive application/selection process</li> </ul>	<ul style="list-style-type: none"> <li>Number of licenses determined by other factors (e.g. consumer demand, zoning, buffers, etc.)</li> <li>Most appropriate for non-retail license type (e.g. labs, manufacturers, etc.)</li> </ul>

## Comparison w/other cities

	Santa Ana	Costa Mesa	Irvine	Long Beach	Pasadena	HB Petition 1, 2
License Cap	30 medical 20 non-medical	No Cap	No Cap (testing only)	32 + 8 (co-location of medical /non-medical)	Retail: 1 per district (6 total) Non-Retail: 4	Retail: 10-12
Population Ratio	1 every 7,000	N/A	N/A	1 every 12,000-15,000	1 every 14,000	Every 17,000

## 2

# Policy Decision: How many licenses should be issued and how?

## The Subcommittee's Recommendation

- No cap for non-retailers.
- Limit 1 license type per owner.
- Non-transferability
- Consider a no-warehousing provision, e.g. require that licensee must begin operation w/n a certain period after license is granted, otherwise the license is revoked and offered to another applicant

## No Consensus Reached:

- Retailers: # of licenses
  - ☐ Up to 5 retailers (1 license for every 40,000 HB residents)
  - ☐ Up to 10 retailers (1 license for every 20,000 HB residents)
- Threshold of employee counts required for Labor Peace Agreement of licensees
  - ☐ NOTE: The State law requires applicants for a state cannabis license with 20+ non-supervisory employees to enter into a LPA with a labor organization.

2

Policy Decision 2-1:  
If cap on # of licenses, how to select?

Competitive Licensing Options

MERIT	FIRST IN LINE	LOTTERY	HYBRID
<ul style="list-style-type: none"><li>• Application/Interview ranking (similar to RFQ/RFA process)</li><li>• Discretionary approval</li></ul>	<ul style="list-style-type: none"><li>• First-come, first serve</li><li>• Online or in-person</li></ul>	<ul style="list-style-type: none"><li>• Lottery machine</li><li>• Raffle drum</li><li>• Computer program</li></ul>	<ul style="list-style-type: none"><li>• Combination of different options (e.g. Merit for first screening + Lottery Process for final selection)</li></ul>
Example Cities/Counties			
<ul style="list-style-type: none"><li>• City of Long Beach</li><li>• City of Pasadena</li></ul>	<ul style="list-style-type: none"><li>• City of Costa Mesa</li><li>• City of Los Angeles</li></ul>	<ul style="list-style-type: none"><li>• City of Santa Ana</li></ul>	



## **Policy Decision 2-1:**

**If cap on # of licenses, how to select?**

### **The Subcommittee's Recommendation**

- ✓ **Merit-based Application process (RFQ/RFA) to identify highest quality operators with:**
  - Prior experience/owner expertise
  - No past violations
  - A detailed business plan and proof of financial capacity/capital to successfully build/operate and in compliance with all the regulations
  - Include Community Benefit Plan (extra point or requirement)
  - Include a residency requirement/preference (e.g. a minimum 3-5 years)
  - Local operator preference (extra point) with a clear guideline
  - Consider an option of hiring a third-party rater to prevent any accusations that the City is biased in any way and risk of lawsuits
  - Consider developing an Administrative Regulation on the specific requirements and evaluation procedure



# Policy Decision: Where to locate through Zoning & Buffer requirements?

STATE	LOCAL	B2B
<ul style="list-style-type: none"><li>• Schools</li><li>• Commercial Daycare</li><li>• Youth Centers</li></ul>	<ul style="list-style-type: none"><li>• Parks</li><li>• Playgrounds</li><li>• Cities may also increase/decrease staff buffer distances</li></ul>	<ul style="list-style-type: none"><li>• Minimum distance between businesses</li><li>• Typically applies to retail only</li><li>• Requires process to determine who has rights to an area</li></ul>

- State buffer requirement is not less than **600 feet distance** from schools, daycares, and youth facilities.
- The City can decide a buffer restriction of more than 600 feet and add restrictions on parks, playgrounds, libraries, or beaches.
  - The City of Long Beach has a buffer restriction of 1,000 ft. of a school, beach, or other dispensaries and 600 ft. of daycare center, park, library, but allowed within mixed-use buildings in downtown area.



# Zoning/Buffer Restriction - Comparison w/other cities

	Orange County		Outside OC		Huntington Beach
	Santa Ana	Costa Mesa	Long Beach	Pasadena	Petition 1,2
Zoning/Buffer restriction	YES	YES	YES	YES	YES
Buffer Limits (State Required 600 feet)	All types 1,000 ft. from K-12 schools, parks, or residential uses.	600 ft. from youth centers;  1,000 ft. from K-12 schools, daycare, playgrounds,	1,000 ft. from K-12 school;  600 feet of daycare center, park, library (no buffer for youth centers)	600 ft. from Residential zone, K-12 school, daycare, church/faith, park or library	600 ft. from K-12 schools (state regulations)
B2B Buffer	500' from another retail cannabis.		1,000 ft. from other dispensaries	1,000 ft. from other cannabis retailers	None.
Downtown, Beach / Specific Facilities	N/A.	1,000 ft. from homeless shelters	1,000 ft. from public beach; Allowed within mixed-use buildings in downtown	500 ft. from testing lab	Unknown.
Zoning district		"Green Zone" for industrial cannabis uses			



## **Policy Decision: Where to locate through Zoning & Buffer requirements?**

### **The Subcommittee's Recommendation**

- ✓ **Retailers** – Allow businesses in the Commercial Zone and Specific Plan Areas but apply buffer restrictions
  - **Exclude Downtown SP5** (No stores in our downtown adjacent to beaches); state and city beaches will be applied 'park' buffers
  - Allowed in multi-tenant buildings as the current law allows
  - No buffer requirement between shops (B2B)
- ✓ **Non-Retailers** - In the Industrial Zone only



## **Policy Decision: Where to locate through Zoning & Buffer requirements?**

### **The Subcommittee's Recommendation - Continued**

- ✓ Drive-through options are allowable as long as it is legal in the specific zones
- ✓ "Grandfather" existing businesses if/when a sensitive use facility opens within existing buffers



## **Policy Decision: Where to locate through Zoning & Buffer requirements?**

### **No Consensus Reached:**

- 1,000 ft. vs. 600 ft. from K-8 schools/high schools
- 1,000 ft. vs. 600 ft. buffer from parks, youth centers, daycare centers?
- Consideration of additional buffer restrictions from homeless shelter
- How to Measure? Parcel to Parcel vs. Building to Building
  - Building to Building
  - Parcel to Parcel
  - A hybrid approach to apply a building-to-building buffer for residents/commercial centers but property lines for all other uses such as parks and sensitive receptors.

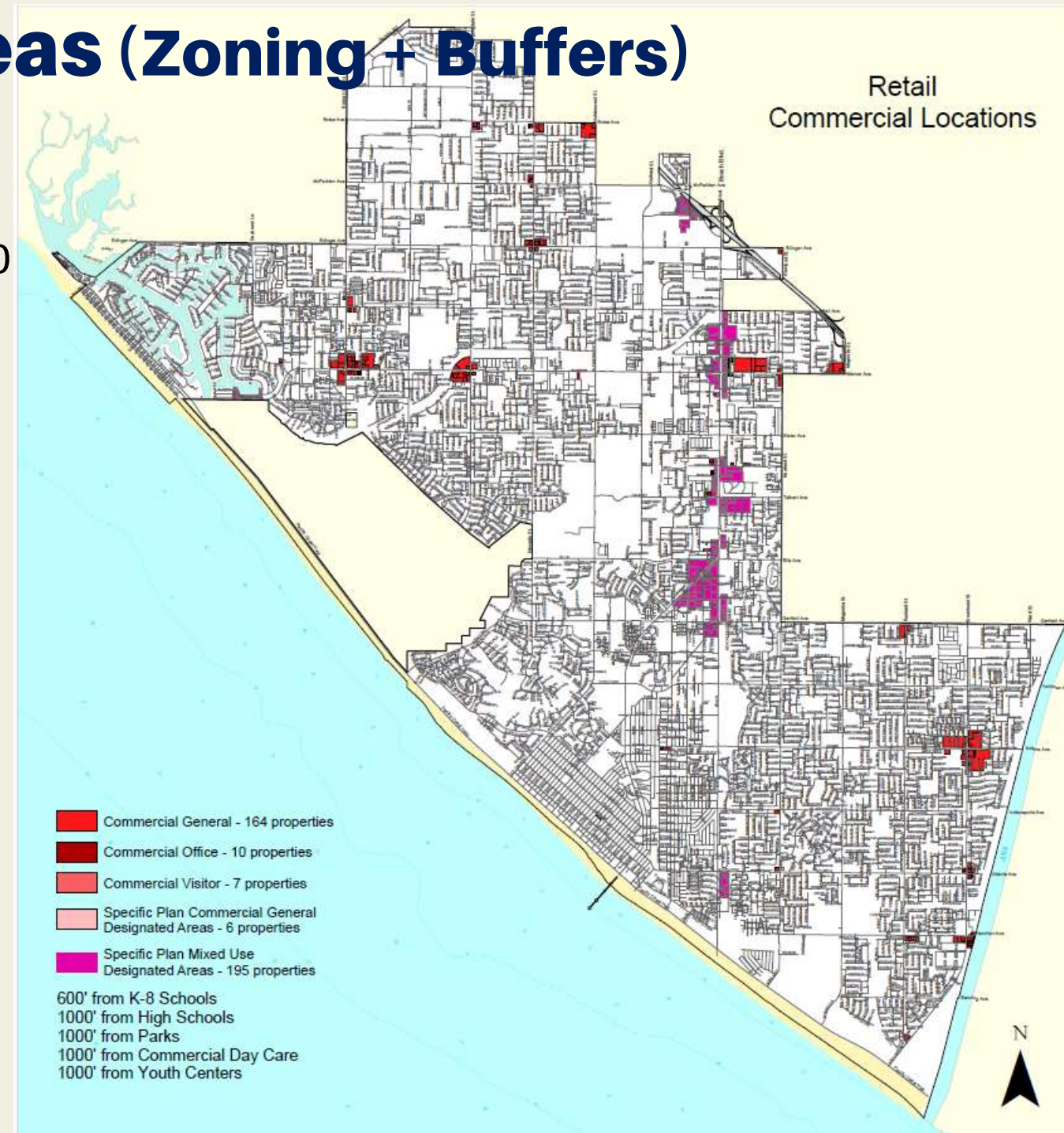
# GIS MAPS for Eligible Areas (Zoning + Buffers)

**1. Non-Retail Parcels** (Industrial and Specific Plan Industrial): 1000 ft. buffer from high schools, and 600 ft. from K-8 and other sensitive uses

**2. Non-Retail Parcels:** Same as Map 1 above, but includes a 1000 ft. buffer from any Residential and Mixed Use sites and Housing Overlay areas.

**3. Retail Parcels** (Commercial and Specific Plan Commercial): 1000 ft. buffer from high schools and 600 ft. from K-8 and other sensitive uses

**4. Retail Parcels** (Commercial and Specific Plan Commercial): 1,000 ft. buffer from high schools and other sensitive uses, and 600 ft. from K-8 schools



# 4

## Policy Decision: Revenue Generating Options

- Cities typically have standard fee(s) to recover City costs and impose general taxes.
- Imposing a general tax requires voter approval in June or Nov. 2022.
- Tax revenues go to the City's General Fund.

### TAXES

- Percentage of gross receipts
- Price per square foot
- **Requires voter approval in June 2022**
- Designed to avoid over-taxing yet ensure sustainability

### FEES

- Application Fees
- Regulatory Fees
- **Limited to cost recovery**, unless negotiated through development agreement

### OTHER BENEFITS

- Development agreements may be used to negotiate additional community benefits



4

# Policy Decision 4-1: Tax Rate

- The State of California imposes both a 15% excise tax on purchases of cannabis/cannabis products, as well as sales tax at 7.75%.
- Numerous counties and cities have developed a wide range of local cannabis taxes, typically from 4-6% of gross receipts, making the cumulative tax rate to range from 25-30%.

## Comparison w/other cities

	Orange County		Outside OC		Huntington Beach
	Santa Ana	Costa Mesa	Long Beach	Pasadena	Petitions 1, 2
Tax Rate	Retail: 8% Non-Retail: 1-6% of gross retail receipts	7%	Retail 6-8% Non-Retail 1% Cultivation \$13.41/sf	Retail: 4% Non-Retail: 1-2.5%	Retail: <ul style="list-style-type: none"><li>• Medicinal 2-4%</li><li>• Recreational 3-5%</li></ul> Non-Retail: 1%



# Projected Tax Revenue & Costs

- **Projected Revenue:** can vary based upon the specified tax rate imposed and number and type of businesses.
  - Per HdL Companies 2019 report, annual tax revenue could be from \$400K - \$600K for retailers.
  - Emerging market makes it difficult to accurately assess (e.g. demand vs. supply)
- **Costs:** One-time and on-going expenditures related to Cannabis oversight includes staffing and enforcement costs, including but not limited to:
  - ☐ Police
  - ☐ Fire
  - ☐ Code Enforcement
  - ☐ Business support
  - ☐ Legal costs
  - ☐ Overall administration costs



# 4

## Policy Decision: Revenue Generating Options

### The Subcommittee's Recommendation

- **Fees for 100% cost recovery** of city expenses, which can be estimated by staff and approved annually by the City Council via resolution.
- **Imposing Tax**
  - Retail Tax: No differentiation between medicinal and recreational products
  - Non-retailers: up to 1% tax
  - Revenues go to General Fund

# 4

## Policy Decision: Revenue Generating Options

### No Consensus Reached:

- **Retail Tax Rate:**

- ☐ 2-3%, or
- ☐ 4-6%, or
- ☐ 5-8% of gross retail receipts

- **Tax Ballot Measure in June -with or without ordinance?**

- Depending on the outcome of the tax ballot measure, the City Council can work on the ordinance or subsequently present to voters for separate approval.



## **Policy Decision: Security, Inspection, and Enforcement Protocols**

### **The Subcommittee's Recommendation**

#### **SECURITY MEASURE REQUIREMENT - HBPD:**

- Security personnel must be on-site 24 hours a day unless alternative security is authorized by the City Manager or his/her designee.
  - Conditionally allows armed security, pursuant to criteria established by Chief of Police.
- 24-hour security surveillance cameras of at least HD-quality all entrances, exits, and all interior spaces.
- Video recordings shall be maintained for at least 90 days
- Limited access areas accessible only to authorized personnel
- All cannabis products to be stored in a secured and locked room.



# **Policy Decision: Security, Inspection, and Enforcement Protocols**

## **The Subcommittee's Recommendation - Continued**

### **SECURITY MEASURE REQUIREMENT - HBPD**

- Maintain a map of the camera locations, the direction of camera coverage, and assigned camera numbers at the premises.
- Copies of video must be made available to the HBPD within 48 hours of request without a search warrant, court order or subpoena.
- Must install sensors for entry/exit, panic buttons, and alarm system
- Must have the capability to remain secure during a power outage
- Application shall include a storage and transportation plan
- The City, County or any investigating official shall have the right to enter the premises of dispensary establishments during regular business hours to inspect and enforce compliance
- Notification to the City within 24 hours after discovering any breach of security



# Policy Decision: Security, Inspection, and Enforcement Protocols

## The Subcommittee's Recommendation - Continued

### **FIRE DEPT.**

- Requires Fire Dept. inspection prior to occupancy requirement
- Cannabis manufacturing facilities must submit plans demonstrating compliance with CA Fire Code, identify any hazardous processes, and fire protection systems
- Commercial cannabis facilities are subject to routine fire and life safety inspections at the frequency identified in the HBFD's Community Risk Assessment

### **CODE ENFORCEMENT**

- Add pre-operational requirement that all owners/operators must remedy any expired building permits for the subject tenant space
- Add operational requirement for permittees to carry and display a copy of the issued permit
- To supplement enforcement efforts, add language allowing the City to board any doors and windows associated with illegally operating cannabis businesses
- Add Administrative Penalties.

# Comparison Chart - Summary

	Orange County			Outside OC	
	Santa Ana	Costa Mesa	Irvine	Long Beach	Pasadena
Retail	YES	YES	NO	YES	YES
Non-Retail	YES (cultivation, manufacturing, testing lab, distribution)	YES (manufacturing, testing lab, distribution)	YES (Testing Laboratory only)	YES	YES (cultivation, testing laboratory)
License Cap	30 medical 20 non-medical	No Cap	No Cap	40 licenses (co-location of medical /non-medical)	Retail – 1 per district (6) Non-Retail – 4
Zoning/Buffer restriction	YES	YES	YES	YES	YES
Licensing Options	Lottery	First come, First serve	Merit-Based	Merit-Based	Merit-Based
Tax Rate	Retail: 8% Non-Retail: 1-6%	7%	No tax; Permit Fees	Retail 6-8% Non-Retail 1% Cultivation \$13.41/sf	Retail: 4% Non-Retail: 1-2.5%



# Industry Petitions vs. City Proposal

	Huntington Beach		Compared to Model Cities		
	Petition 1	Petition 2	Long Beach	Pasadena	Huntington Beach (Proposed)
Retail (w/delivery)	YES	YES	YES / NOT YET	YES / YES	YES
Non-Retail	YES	YES	YES	YES (cultivation, testing laboratory)	YES
# of License /permits	10-12	10-12	32+8 licenses (co-location of medical /non-medical)	Retail – 6 (1 per district) Non-Retail – 4	Retail – 5 vs. 10 Non-Retail – No cap
License per population ratio	1 every 17,000 residents		1 every 12,000	1 every 14,000	1 every 30,000 vs. 20,000
Zoning	NO. Allows in all commercial/industrial areas including Downtown		YES	YES	Retailer: Commercial & all special plan areas except Downtown Non-Retailers: Industrial Zone only
Buffer Restriction	600 ft buffer from schools 600 ft buffer from schools (state regulations)		1,000 ft of a school, beach, or other dispensary 600 feet of daycare center, park, library Allowed within mixed-use buildings in downtown	600 ft buffer from residential zones & sensitive uses;  1,000 ft from other cannabis businesses	1,000 ft buffer vs. 600 buffer from schools  No B2B buffers

	Huntington Beach		Compared to Model Cities		
	Petition 1	Petition 2	Long Beach	Pasadena	Huntington Beach (Proposed)
Licensing Options	Unknown at this time.		Merit-Based	Merit-Based	Merit-Based
Equity Program	Unknown at this time.		YES (20% of all permits to be issued to Equity Applicants-final approval pending)	YES (50% of all permits to be issued to Equity Applicants)	To be determined at a later time.
Tax Rate	Medicinal 2-4% Non-medicinal 3-5% Non-Retail 1%		Retail (Medical 6%, Recreational 8%) Non-Retail 1% Cultivation \$13.41/sf	Retail: 4% (NTE 6%) Non-Retail: 1-2.5%, \$10/canopy sf	<b>Retail: 2-3%, 4-6%, or 5-8%</b> Non-Retail: up to 1% (applied same to both medical and recreational)
Total taxing rate (w/ state)	Medicinal 28-30% Non-medicinal 29-31%		Appx. 32-34%	Appx. 30% max	Appx. 28 - 34%
Revenue Use	N/A		Unrestricted General Fund Revenue purposes such as public safety, office of cannabis oversight	Unrestricted General Fund Revenue purposes such as public safety	Unrestricted General Fund Revenue purposes such as public safety
Other fees	Unknown at this time.		Application fees (per one owner license): appx. \$6,052	Application fees (cost recovery): appx. \$24,000	Fees for 100% cost-recovery ; fee schedule TBD

# Summary: Non-Consensus Policy Areas

- 1) **Number Cap for Retail Licenses**
- 2) **Location – Buffer Restrictions**
- 3) **Tax Rates for Retail Establishments**
- 4) **Regulatory Ordinance adopted by City Council or by voters?**



February 15, 2022      City Council Study Session

# Next Steps / Recommendations

1. Direct staff to work with the City Attorney's Office to develop a Cannabis Tax Ballot Measure to place on upcoming June Election
2. Direct staff to work with the City Attorney's Office to prepare a regulatory and land use ordinance based on the regulatory framework presented and determined tonight for the Planning Commission and City Council's consideration.



**Taxation for  
Voter Approval**

**Regulatory  
Ordinances**

**Implementation  
(application, fees,  
etc.)**



**QUESTIONS?**